



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/168662

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Robert Derendinger, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On June 15, 2015 the petitioner's provider completed a Personal Care Screening Tool.

3. On June 16, 2015 the petitioner's provider submitted a request for prior authorization of PCW hours based upon the aforementioned PCST. Specifically, the petitioner's provider requested 31.5 hours per week of PCW time. They further requested an additional 10 hours per week of as needed PCW services, and 6 as needed skilled nursing visits. The duration of this request was for 53 weeks. This was at a cost of \$68,874.50. The provider later modified their request by removing the 10 hours per week of as needed PCW services. This reduced the total prior authorization cost by \$16,430.
4. On August 17, 2015 the respondent notified petitioner in writing that it approved 29.75 hours per week of PCW hours plus the 6 requested as needed skilled nursing visits.
5. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 14, 2015.
6. The petitioner lives with family.
7. The petitioner has diagnoses of Downs Syndrome, hypothyroidism, and developmental delay. Her functional limitations are bowel/bladder incontinence, endurance, ambulation and safety risk due to impairment. She is 26 years old.

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;

9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider originally requested 31.5 hours per week of PCW time. They further requested an additional 10 hours per week of as needed PCW services, and 6 as needed skilled nursing visits. They later modified their request by removing the requested 10 hours per week of as needed PCW services. According to the letter from the respondent, DHS approved 29.75 hours per week of PCW services plus the 6 as needed skilled nursing visits. At the hearing the petitioner did not request a specific number of PCW hours. She testified that she was getting 28 hours per week of PCW time, and that that was not enough time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

The petitioner is a 26 year old woman who lives with family. She has Down's syndrome, hypothyroidism, and developmental delay. Her functional limitations are bowel/bladder incontinence, endurance, ambulation, and safety risk due to impairment.

The Department approved the majority of requested time. Originally the provider requested an additional 10 hours per week of as needed PCW time. The provider later modified their request by removing this time. The petitioner and her PCW testified that the PCW needed more time to run the petitioner's errands and do tasks like grocery shopping for the petitioner. The only time that is allowed for these types of tasks is services incidental to daily living. Because the petitioner lives with family, she is allowed a maximum of $\frac{1}{4}$ of the total time spent on activities of daily living (ADLs) for these incidental activities. The petitioner would not be allowed an additional 10 hours per week above and beyond that time for grocery shopping and errands. The Department allotted nearly 5 hours per week for these incidental services. This is a sufficient amount of time.

The Department reduced the remaining time requested by 1.75 hours per week. This reduction was in the area of mobility and transfers. The PCST stated that the petitioner is impulsive and uses unsound/unsafe judgment when ambulating. She has poor coordination and pain in her knees. This has resulted in falls/injuries. The Department argues that the clinical note states that the petitioner uses a walker for ambulation, but the note does not talk about pain in the knees or impulsive actions or profound developmental delay. I agree with the Department. The petitioner was at the store with her PCW when I called to do this telephone hearing. She was able to get out of the store to a safe spot for the hearing. She does not appear to have a severe developmental delay. Had I not had the information contained in the exhibits, I would not have believed that the petitioner had Down's syndrome and was developmentally delayed. She did not appear confused during the hearing. She understood that the PCW time had been reduced. She disagreed with the decision, and had an understanding of the appeal process, and what was happening. Using a walker seems appropriate. However, I do not believe that an additional 1.75 hours per week is necessary in this area.

I further note that the Department approved the requested time for difficult behaviors and medical conditions. This is additional time because the PCST stated that the petitioner could be combative and resistive to ADL care. At the hearing the petitioner was very cooperative. She seemed to work well with her PCW. The PCW testified that the petitioner does not like to get up in the morning, and can be difficult getting ready. She further testified that going to bed is sometimes a problem. They stated that it was a good day for the petitioner. The Department gave the PCST the benefit of the doubt and approved the additional 4 hours and 58 minutes per week as requested.

It is the petitioner's burden to establish the necessity of the requested time. At the time of hearing, the petitioner did not offer testimony of the caregiver's to explain why the Department's calculation of need under the PCST was flawed. The petitioner did not articulate what quantity of additional time is needed for each task or what specific behaviors justify more time. Nothing was quantified. The Department's analysis of the petitioner's needs is the most thorough and credible determination in the record. The petitioner received a copy of the nurse consultant's letter prior to the hearing, yet petitioner offered no specific rebuttal to any of the points or time calculations offered by the Department. The petitioner must

offer some specificity and evidence to support the requested time. Without a better way to quantify the time for services, I have no basis upon which to find in favor of the petitioner's request for PCW hours.

The petitioner should be aware that if the provider can show a medical need for more time, it can always request a new prior authorization for additional time with evidence to show the need for the additional time. However, based upon the evidence before me I cannot conclude that the respondent's reduction was incorrect.

CONCLUSIONS OF LAW

The respondent correctly modified the petitioner's request for Personal Care Worker (PCW) hours.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

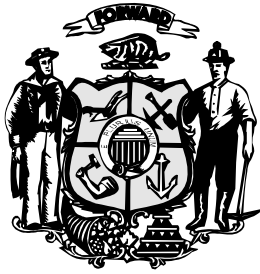
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 10, 2015.

Division of Health Care Access and Accountability